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ARIZONA SUPREME COURT

**In Re ARCP, Rule 64.1 –
the Rule on Civil
Arrest Warrants**

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**Rule 28 Petition to Amend
Amend the Rule on
Civil Arrest Warrants**

For the reasons that follow, this petition asks the Court to amend ARCP, Rule 64.1 dealing with “civil arrest warrants” (CAWs). First, (a) modernization of the rule is long-overdue; the textual requirement that, absent good cause, CAWs are not to be executed between the nighttime hours of ten p.m. to 6:30 a.m. is both anachronistic and anomalous; it does not recognize that ours is now a 24-hour society; and (b) the CAW’s function to allow a court to exercise its inherent authority to obtain the physical presence of a person who failed to appear for a court proceeding after proper notice should be clarified to properly connect the use of a CAW as a contempt device in both criminal and civil proceedings.

- I. THE REQUIREMENT THAT CIVIL ARREST WARRANTS NOT BE EXECUTED BETWEEN NIGHTTIME HOURS OF 10:00 PM TO 6:30 AM IS OUT OF DATE TO OUR 24-HOUR, MOBILE, COMMERCIALIZED SOCIETY. PERSONS ARE OFTEN ARRESTED ON VALID WARRANTS WHILE DRIVING OR PASSENGERS, AT PUBLIC ESTABLISHMENTS OR OUT IN**

**PUBLIC. THE NIGHTTIME EXCLUSION RESTRICTS EFFECTIVE
LAW ENFORCEMENT FOR NO RATIONAL REASON.**

For some reason, when the rules on civil warrants were adopted, a provision was included that warrants are not to be executed during nighttime hours (absent a finding of good cause). Whether this textual requirement was in fact “jurisdictional” (i.e., a person arrested pursuant to a valid warrant while walking the streets in public was the subject of an illegal arrest) or “directory” (the arrest was valid but against stated protocol) in nature is an open question. The undefined exception for “good cause” adds no independent legal value to the nighttime exclusion and merely invites the court to add a formulaic phrase overcoming the exception.

Needless to say, this ostensible safe harbor for nighttime arrests is nonsensical, especially in our present society. We live in a world when restaurants, stores, health clubs, and convenience markets are open 24 hours a day. Our citizens, absconders included, are out and about at all times. Arizona no longer turns out its lights and goes to sleep, not to be disturbed in the repose of their dwelling until the break of dawn. To the contrary, in our mobile society, the streets are busy with cars, pedestrians, and bright lights. It is well known that many arrest warrants are the result of drivers and passengers being stopped and a search of police records reveals an outstanding warrant for one or more of the vehicle’s occupants.

As for the privacy of the home, this too should be seen as fictional. A person wanted for arrest for failing to pay child support, absconding from a court hearing (criminal or civil), or otherwise being sought by law enforcement, should have no special expectation of immunity from arrest at home merely because it is nighttime. All citizens

should be accountable to the law wherever found or located. The nighttime exclusion should be deleted.

II. THE CIVIL ARREST WARRANT SHOULD BE REVISED TO ACCOMMODATE ITS USE FOR ANY TYPE OF ARREST THAT DOES NOT CHARGE A NEW, ADDITIONAL OFFENSE OF FAILURE TO APPEAR.

Arrest warrants have both a substantive and procedural aspect. As a matter of substance, by statute, a person who fails to appear when charged with a crime may be cited for a new offense of failure to appear (FTA). If the underlying charge was a felony, the absconder is chargeable with a new FTA felony; for a misdemeanor, the absconder may be cited for the new FTA misdemeanor. See ARS §§ 13-2507 and 2506.

From the outset, as a new substantive offense, the charging of a new FTA offense has been problematic (although effective when the absconder was apprehended years after the initial offense and the evidence for the underlying violation had become stale due to passage of time). On the one hand, it was logical to charge a crime for failing to appear. On the other, charging a new offense meant that added due process requirements applied such as arraignment, plea to the charge, pretrial case processing, trial on the merits of the FTA, and even appellate review. In reality, these procedures were rarely followed and add little to the normal processing of an arrest on an outstanding warrant.

Just as important, several years ago, the criminal rules of procedure were amended to provide for “rule warrants” under ARCrP, Rules 3.1 and 26.12, rules which authorize the court to issue warrants for non-appearances on pre- and post-adjudication bases. The rule warrant, like the civil arrest warrant, allowed the court to exercise its inherent authority to enforce its orders. The rule warrant is designed to be procedural;

it is a means to obtain the presence of the defendant to allow enforcement of the court's orders and process. This was intended to be an aspect of the court's contempt power to obtain compliance with previous orders and requirements.

Unfortunately, as a procedural matter, rule warrants are mistakenly confused with new offense-type warrants and there are administrative issues with erroneous final disposition reports entered by law enforcement when new warrant arrests are mislabeled as new offenses.

By amending the provisions on CAWs, it is possible that both civil warrants and their analogue rule warrants may be administratively adjudicated through Rule 64.1 and the booking process will be more accurate and efficient. The proposed changes to Rule 64.1 are set forth with strike out and inserted language all in CAPS, along with a suggested 2014 Official Comment.

Respectfully submitted this 7th of January, 2014,

Hon. George T. Anagnost

Rule 64.1(a). Definition

A “civil arrest warrant” is an order issued in a non-criminal matter OR RULE WARRANT ISSUED PURSUANT TO ARCRIMP, RULES 3.1 OR 26.12, directed to any peace officer in the state, to arrest the individual named therein and bring such person before the court.

Rule 64.1(b). When issued

The court may, on motion of a party or on its own motion, issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

(1) Having been ordered by the court to appear personally at a specific time and location, and having received actual notice of such order, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

(2) Having been served personally with a subpoena to appear in person, at a specific time and location, which contains a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear.

Rule 64.1(c). Content of warrant

The civil arrest warrant shall be ordered by the judge and issued by the clerk. It shall contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty. It shall command that the person named be brought before the judge or, if the judge is absent or unable to act, the nearest or most accessible judge in the same county. The warrant shall set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or an order that the arrested person be held without bond until the arrested person is seen by a judge.

Rule 64.1(d). Time and Manner of Execution

A civil arrest warrant is executed by the arrest of the person named therein. ~~Unless the court otherwise directs upon a showing of good cause, a civil arrest warrant shall not be executed between the hours of ten p.m. and six thirty a.m. The arrested person shall be brought immediately before the issuing judge if it is reasonably possible to do so. In any event, [T]he arrested person shall be brought before the issuing judge, or a judge in the county of arrest THE NEAREST AVAILABLE JUDGE OR MAGISTRATE, within 24 hours of the execution of the warrant. If the person is arrested in a county other than the county of issue, the arresting officer shall notify the sheriff in the county of issue who shall, as soon as possible, take custody of the arrested person and transport the arrested person to the issuing judge.~~

Rule 64.1(e). Duty of court after execution of warrant

The judge shall advise the arrested person of the nature of the proceedings, release the arrested person on the least onerous terms and conditions which reasonably guarantee the required appearance, and set the date of the next court appearance.

Rule 64.1(f). Forfeiture of bond

The procedure for the forfeiture of bonds in criminal cases shall apply.

Rule 64.1 STATE BAR COMMITTEE NOTE [1985]

The purpose of this Rule is to codify the mechanism by which the court exercises its inherent power to command the attendance of persons who disobey an order to appear. The Rule is intended to cover virtually every such situation in non-criminal proceedings, e.g., the witness who ignores a subpoena, the juror who disobeys an order to report for jury duty, the judgment debtor who fails to appear for supplemental proceedings, the person who disobeys an order by a judge to appear for a deposition at a lawyer's office, and the contemnor who fails to report to jail as directed.

2014 OFFICIAL COMMENT

ALL ARRESTS PURSUANT TO ANY WARRANT, WHETHER DENOMINATED "CRIMINAL" OR "CIVIL", ARE IN EFFECT THE SAME AS IT INVOLVES TAKING A PERSON INTO CUSTODY WHETHER THE PERSON IS ANSWERING TO CRIMINAL CHARGES OR BEING BROUGHT BEFORE THE COURT FOR NON-COMPLIANCE WITH COURT ORDERS. THE PHRASE "CIVIL ARREST WARRANT" SHOULD BE UNDERSTOOD IN A GENERIC SENSE AS MEANING THAT THE DEFENDANT IS NOT BEING CHARGED WITH A NEW CRIMINAL OFFENSE OF FAILURE TO APPEAR. THIS RULE SHOULD BE UNDERSTOOD IN TANDEM WITH RULE WARRANTS ISSUED UNDER THE RULES OF CRIMINAL PROCEDURE.